



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/1338

Re: Property at 169 Queens Drive, Queens Park, Glasgow, G42 8QY (“the Property”)

Parties:

Stephen Wright, 0/2 19 Sherbrooke Avenue, Pollokshields, Glasgow, G41 4HF; Laura Chong, 37 St Gabriels Road, London, NW2 4DT (“the Applicants”)

Michael Hastings, Miryam Hastings, both of 169 Queens Drive, Queenspark, Glasgow, G42 8QY; 169 Queens Drive, Queens Park, Glasgow, G42 8QY (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member) and Gerard Darroch (Ordinary Member)

Background

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicants to the Respondents commencing on 1 March 2019.
2. The application was dated 19 March 2024 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Leave in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016* dated 22 November 2023 and served upon the Respondents by Sheriff Officer on that date. (The Tenancy Agreement was in a short assured tenancy form, and was silent on means of service though there was no dispute made as to the sufficiency of service.) The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice merely repeated

wording from the statute on Ground 1 and referred to no attached evidence. The Notice to Leave intimated that an application to the Tribunal would not be made before 15 February 2024.

4. The application papers included a copy of a letter from TC Young LLP dated 6 March 2024 saying that they had been instructed to act in a private sale of the Property. A Home Report for the Property was included, dated 19 October 2023. The application itself explained that the reasons for seeking to evict and sell was that the Applicants found that “[w]ith the costs of insurance and maintenance of the let property, the rental charge is no longer sustainable” for them. It further referred to a change in the first Applicant’s housing status, so that he was living in temporary accommodation and sought to use his share of any equity to purchase his own property.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Glasgow City Council on 18 March 2024 was included in the application papers.

The Hearing

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 21 August 2024 at 10:00. We were addressed by agents for both parties: Simone Callaghan, paralegal, TC Young for the Applicants and Lyndsey McBride, legal adviser, Govan Law Centre, for the Respondents.
7. Shortly before the calling of the CMD submissions and productions were lodged for the Respondents. The Respondents’ agent spoke further to the documents, explaining that her law centre had only been able to take formal instructions on 13 August 2024 and further documents were still awaited in support of the submissions. The submissions (written, and oral submissions at the CMD) explained the following:
 - a. The Respondents did not dispute that the material terms of Ground 1 were satisfied.
 - b. In regard to reasonableness, they submitted that a suspension of three months was appropriate in consideration of:
 - i. In June 2024, the Respondents’ son (17 years old by the date of the CMD) had surgery to his chest, which surgery had a recommended six-month recovery time. He was currently on pain medication for continued pain from the procedure, as well as on a waiting list for other medical treatment. It would be unsuitable, and unduly stressful, for him to move in the short term.
 - ii. The Respondents both worked and this limited their ability to look for private rented accommodation, though attempts had been made. The second Respondent was coming to the end of a period of contracted work and hoped to have more time to attend viewings of private tenancies once her contract was over.
 - iii. The Respondents were on the public housing waiting list, and receiving assistance from the homelessness unit. Further the agent

was continuing to provide assistance in liaising with the local authority. The agent was hopeful that the Respondents could be rehoused, at least into temporary furnished accommodation, if an extension was provided. If no extension was provided, she was concerned that – even with the son’s medical circumstances – homelessness accommodation in a hotel would be the only offer of assistance immediately provided by the local authority on eviction. (The Respondents’ agent conceded that she understood the homelessness team was only mandated to provide assistance within two months of impending homelessness, but she thought that with her law centre’s assistance and in consideration of the medical issues, the Council may prioritise any application straight away even if a three-month suspension was granted.)

We also noted from the submissions and productions that the second Respondent was said to be Ms Miryam Lacey, not Ms Miryam Hastings. (No motion was made by either party to amend the parties to the application.)

8. The Applicants confirmed that the application for eviction was insisted upon and initially sought eviction at the CMD without any suspension, on the basis of the continued financial pressure of being landlords, and a concern that the local authority would not take steps to assist rehousing unless there was an impending eviction. She volunteered that the Applicants were willing to “accommodate” informally an agreed eviction date, offering 1 to 4 weeks further delay, but she was instructed not to agree the three month suspension.
9. We took the parties through any matters agreed or disputed. Generally, there were no disputes on either side but we noted:
 - a. The Applicants’ agent was unable to provide any specific financial information. The Applicants relied on their decision never to seek an increasing in the passing rent, which they said was now below market rates, but no information on market rates for the area was provided. The Applicants further stated that with insurance, factoring costs, and maintenance costs, it was no longer “sustainable” for them to remain landlords, but the Applicants’ agent was unable to confirm whether or not the Property was now being rented at a loss or not, or any of the figures being referred to (apart from rent). The Respondents’ agent responded that she would need to take instructions on the fuller position stated by the Applicants’ agent at the CMD and may wish to see vouching of the financial position.
 - b. The Applicants’ agent did not dispute that the Respondents’ son had been told that he had a six-month recovery period, but insisted on eviction in normal terms nonetheless. The Respondents’ agent stated that further medical evidence vouching the need for a six-month recovery period, and considering the effect of a move in the early part of that, was still awaited.
10. We indicated to the parties that it did appear that evidence would be needed and, having consulted with the clerk, any continued CMD or Hearing would be unlikely before late September at the earliest, and could be much later. In consideration of the likely timescale for determining a dispute on reasonableness, we offered the Applicants’ agent an opportunity to consult with her clients on whether they

had alternative instructions on the Respondents' proposed suspension. A brief adjournment was granted for this purpose.

11. On return from adjournment, the Applicants' agent confirmed that, in consideration of likely timetabling of further procedure, the Applicants would agree to an order for eviction with a three-month suspension, of consent, provided it was granted today. The Respondents' agent confirmed this offer remained.
12. No motion for expenses was made for expenses by either party.

Findings in Fact

13. On 1 March 2019, the Applicants let the Property to the Respondents under an agreement in a "short assured tenancy" form with commencement on 11 November 2021 ("the Tenancy").
14. The Property is the Respondents' only or main residence and the Tenancy is thus a Private Residential Tenancy ("PRT").
15. On or around 22 November 2023, the Applicants' agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that the Applicants wished to sell the Property.
16. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 15 February 2024.
17. A copy of the Notice to Leave was served on the Respondents by Sheriff Officer on 22 November 2023.
18. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on 19 March 2024.
19. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Glasgow City Council on 18 March 2024.
20. The Applicants formally instructed TC Young LLP to act in a private sale of the Property on or about 6 March 2024.
21. The Applicants obtained a Home Report for the Property from Allied Surveyors on or about 19 October 2023.
22. The Applicants wish to sell the Property with vacant possession in early course. They wish to discontinue acting as landlords due to financial considerations, and so that they – in particular the first Applicant – may utilise their equity in the Property for other purposes.

23. The Respondents reside with their 17-year old son at the Property.
24. The Respondents' son received surgery in June 2024 and expects a six-month recovery from the operation.
25. The Respondents' son currently suffers pain as a result of the operation and is being treated for this.
26. The Respondents' son currently awaits treatment for a further medical condition which condition would potentially interfere with his ability to attend to a swift removal from the Property.
27. The Respondents are making active attempts to obtain alternative accommodation but has thus far failed to obtain a new tenancy.
28. The Respondents hope to increase their level of action to investigate potential private tenancies within the next month, due to a change in the second Respondent's working circumstances.
29. On 19 July 2024, a Sheriff Officer acting for the Tribunal intimated the CMD of 21 August 2024 upon the Respondents.

Reasons for Decision

30. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
31. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *...the landlord intends to sell the let property.*
 - (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
 - (a) *is entitled to sell the let property,*
 - (b) *intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*
 - (c) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
 - (3) *Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*
 - (a) *a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*
 - (b) *a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.*
32. The letter from TC Young and the Home Report constitutes evidence under paragraph (3). On the basis of the submissions by the Applicants we agreed that

paragraphs (2)(a) and (b) were also satisfied. In any event, the Respondents conceded that the material requirements of Ground 1 were satisfied.

33. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We accepted the Applicants' reasons for wishing to sell, and they were not disputed by the Respondents (subject to a potential request for evidence of the financial position). The Respondents' submissions on reasonableness raised significant issues on which further evidence would be required if an agreed position could not be reached. We were obliged to the Respondents for their straight-forward proposal, and to the Applicants' agent for her time to investigate whether alternative instructions may be provided. In light of the Respondents' consent to an order subject to suspension and the Applicants' agreement to same, we were satisfied that the Applicants' reasons for seeking eviction were reasonable subject to an agreed suspension of three months (which, we noted, was still less than the full length of the son's apparent recovery period).
34. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended until 12 noon on 22 November 2024.

Decision

35. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 1 of Schedule 3 of that Act, suspended as stated above.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Joel Conn

21 August 2024

Legal Member/Chair

Date